
SUBSTITUTE HOUSE BILL 2754

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Government Administration (originally sponsored by Representatives Dyer and Wolfe)

Read first time 02/05/98. Referred to Committee on .

1 AN ACT Relating to the distribution of certain governmental lists
2 and information; amending RCW 82.32.330 and 43.105.310; reenacting and
3 amending RCW 46.12.370 and 43.105.170; adding new sections to chapter
4 42.17 RCW; and adding a new section to chapter 82.32 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 46.12.370 and 1997 c 432 s 6 and 1997 c 33 s 1 are
7 each reenacted and amended to read as follows:

8 In addition to any other authority which it may have, the
9 department of licensing may furnish lists of registered and legal
10 owners of motor vehicles only for the purposes specified in this
11 section to:

12 (1) The manufacturers of motor vehicles, or their authorized
13 agents, to be used to enable those manufacturers to carry out the
14 provisions of the National Traffic and Motor Vehicle Safety Act of 1966
15 (15 U.S.C. sec. 1382-1418), including amendments or additions thereto,
16 respecting safety-related defects in motor vehicles;

17 (2) Any governmental agency of the United States or Canada, or
18 political subdivisions thereof, to be used by it or by its authorized
19 commercial agents or contractors only in connection with the

1 enforcement of motor vehicle or traffic laws by, or programs related to
2 traffic safety of, that government agency. Only such parts of the list
3 as are required for completion of the work required of the agent or
4 contractor shall be provided to such agent or contractor;

5 (3) A commercial parking company requiring the names and addresses
6 of registered owners to notify them of outstanding parking violations.
7 Subject to the disclosure agreement provisions of RCW 46.12.380 and the
8 requirements of Executive Order 97-01, the department may provide only
9 the parts of the list that are required for completion of the work
10 required of the company;

11 (4) An authorized agent or contractor of the department, to be used
12 only in connection with providing motor vehicle excise tax, licensing,
13 title, and registration information to motor vehicle dealers; ((or))

14 (5) Any business regularly making loans to other persons to finance
15 the purchase of motor vehicles, to be used to assist the person
16 requesting the list to determine ownership of specific vehicles for the
17 purpose of determining whether or not to provide such financing; or

18 (6) Private companies that provide on-line computer data base
19 services to federal, state, and local agencies for law enforcement or
20 government purposes. The department shall first obtain the written
21 agreement and assurances satisfactory to the agency of any company
22 requesting information under this section that any list so obtained
23 shall not be provided to any person other than as provided in this
24 subsection (6).

25 In the event a list of registered and legal owners of motor
26 vehicles is used for any purpose other than that authorized in this
27 section, the manufacturer, governmental agency, commercial parking
28 company, authorized agent, contractor, financial institution, or their
29 authorized agents or contractors responsible for the unauthorized
30 disclosure or use will be denied further access to such information by
31 the department of licensing.

32 NEW SECTION. Sec. 2. A new section is added to chapter 42.17 RCW
33 to read as follows:

34 Notwithstanding the provisions of RCW 42.17.260, state agencies may
35 furnish lists that they maintain of disclosable public information,
36 including such lists in computer readable form or on magnetic tape,
37 that they make available to other federal, state, or local government
38 agencies, including law enforcement agencies, to private companies that

1 provide on-line computer data base services with data bases consisting
2 primarily of public records. An agency shall first obtain the written
3 agreement and assurances of the data base company satisfactory to the
4 agency that the company will supply the lists and information so
5 obtained only to federal, state, or local government agencies solely
6 for law enforcement or governmental purposes. Nothing in this section
7 makes information disclosable that would not otherwise be disclosable
8 by the originating agency.

9 **Sec. 3.** RCW 82.32.330 and 1996 c 184 s 5 are each amended to read
10 as follows:

11 (1) For purposes of this section:

12 (a) "Disclose" means to make known to any person in any manner
13 whatever a return or tax information;

14 (b) "Return" means a tax or information return or claim for refund
15 required by, or provided for or permitted under, the laws of this state
16 which is filed with the department of revenue by, on behalf of, or with
17 respect to a person, and any amendment or supplement thereto, including
18 supporting schedules, attachments, or lists that are supplemental to,
19 or part of, the return so filed;

20 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
21 nature, source, or amount of the taxpayer's income, payments, receipts,
22 deductions, exemptions, credits, assets, liabilities, net worth, tax
23 liability deficiencies, overassessments, or tax payments, whether taken
24 from the taxpayer's books and records or any other source, (iii)
25 whether the taxpayer's return was, is being, or will be examined or
26 subject to other investigation or processing, (iv) a part of a written
27 determination that is not designated as a precedent and disclosed
28 pursuant to RCW 82.32.410, or a background file document relating to a
29 written determination, and (v) other data received by, recorded by,
30 prepared by, furnished to, or collected by the department of revenue
31 with respect to the determination of the existence, or possible
32 existence, of liability, or the amount thereof, of a person under the
33 laws of this state for a tax, penalty, interest, fine, forfeiture, or
34 other imposition, or offense: PROVIDED, That data, material, or
35 documents that do not disclose information related to a specific or
36 identifiable taxpayer do not constitute tax information under this
37 section. Except as provided by RCW 82.32.410, nothing in this chapter
38 shall require any person possessing data, material, or documents made

1 confidential and privileged by this section to delete information from
2 such data, material, or documents so as to permit its disclosure;

3 (d) "State agency" means every Washington state office, department,
4 division, bureau, board, commission, or other state agency;

5 (e) "Taxpayer identity" means the taxpayer's name, address,
6 telephone number, registration number, or any combination thereof, or
7 any other information disclosing the identity of the taxpayer; and

8 (f) "Department" means the department of revenue or its officer,
9 agent, employee, or representative.

10 (2) Returns and tax information shall be confidential and
11 privileged, and except as authorized by this section, neither the
12 department of revenue nor any other person may disclose any return or
13 tax information.

14 (3) The foregoing, however, shall not prohibit the department of
15 revenue from:

16 (a) Disclosing such return or tax information in a civil or
17 criminal judicial proceeding or an administrative proceeding:

18 (i) In respect of any tax imposed under the laws of this state if
19 the taxpayer or its officer or other person liable under Title 82 RCW
20 is a party in the proceeding; or

21 (ii) In which the taxpayer about whom such return or tax
22 information is sought and another state agency are adverse parties in
23 the proceeding;

24 (b) Disclosing, subject to such requirements and conditions as the
25 director shall prescribe by rules adopted pursuant to chapter 34.05
26 RCW, such return or tax information regarding a taxpayer to such
27 taxpayer or to such person or persons as that taxpayer may designate in
28 a request for, or consent to, such disclosure, or to any other person,
29 at the taxpayer's request, to the extent necessary to comply with a
30 request for information or assistance made by the taxpayer to such
31 other person: PROVIDED, That tax information not received from the
32 taxpayer shall not be so disclosed if the director determines that such
33 disclosure would compromise any investigation or litigation by any
34 federal, state, or local government agency in connection with the civil
35 or criminal liability of the taxpayer or another person, or that such
36 disclosure would identify a confidential informant, or that such
37 disclosure is contrary to any agreement entered into by the department
38 that provides for the reciprocal exchange of information with other
39 government agencies which agreement requires confidentiality with

1 respect to such information unless such information is required to be
2 disclosed to the taxpayer by the order of any court;

3 (c) Disclosing the name of a taxpayer with a deficiency greater
4 than five thousand dollars and against whom a warrant under RCW
5 82.32.210 has been either issued or filed and remains outstanding for
6 a period of at least ten working days. The department shall not be
7 required to disclose any information under this subsection if a
8 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued
9 a warrant that has not been filed; and (iii) has entered a deferred
10 payment arrangement with the department of revenue and is making
11 payments upon such deficiency that will fully satisfy the indebtedness
12 within twelve months;

13 (d) Disclosing the name of a taxpayer with a deficiency greater
14 than five thousand dollars and against whom a warrant under RCW
15 82.32.210 has been filed with a court of record and remains
16 outstanding;

17 (e) Publishing statistics so classified as to prevent the
18 identification of particular returns or reports or items thereof;

19 (f) Disclosing such return or tax information, for official
20 purposes only, to the governor or attorney general, or to any state
21 agency, or to any committee or subcommittee of the legislature dealing
22 with matters of taxation, revenue, trade, commerce, the control of
23 industry or the professions;

24 (g) Permitting the department of revenue's records to be audited
25 and examined by the proper state officer, his or her agents and
26 employees;

27 (h) Disclosing any such return or tax information to a peace
28 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
29 official purposes. The disclosure may be made only in response to a
30 search warrant, subpoena, or other court order, unless the disclosure
31 is for the purpose of criminal tax enforcement. A peace officer or
32 county prosecuting attorney who receives the return or tax information
33 may disclose that return or tax information only for use in the
34 investigation and a related court proceeding, or in the court
35 proceeding for which the return or tax information originally was
36 sought;

37 (i) Disclosing any such return or tax information to the proper
38 officer of the internal revenue service of the United States, the
39 Canadian government or provincial governments of Canada, or to the

1 proper officer of the tax department of any state or city or town or
2 county, for official purposes, but only if the statutes of the United
3 States, Canada or its provincial governments, or of such other state or
4 city or town or county, as the case may be, grants substantially
5 similar privileges to the proper officers of this state;

6 (j) Disclosing any such return or tax information to the Department
7 of Justice, the Bureau of Alcohol, Tobacco and Firearms of the
8 Department of the Treasury, the Department of Defense, the United
9 States Customs Service, the Coast Guard of the United States, and the
10 United States Department of Transportation, or any authorized
11 representative thereof, for official purposes;

12 (k) Publishing or otherwise disclosing the text of a written
13 determination designated by the director as a precedent pursuant to RCW
14 82.32.410;

15 (l) Disclosing, in a manner that is not associated with other tax
16 information, the taxpayer name, entity type, business address, mailing
17 address, revenue tax registration numbers, standard industrial
18 classification code of a taxpayer, and the dates of opening and closing
19 of business. This subsection shall not be construed as giving
20 authority to the department to give, sell, or provide access to any
21 list of taxpayers for any commercial purpose except as provided in
22 section 4 of this act; or

23 (m) Disclosing such return or tax information that is also
24 maintained by another Washington state or local governmental agency as
25 a public record available for inspection and copying under the
26 provisions of chapter 42.17 RCW or is a document maintained by a court
27 of record not otherwise prohibited from disclosure.

28 (4)(a) The department may disclose return or taxpayer information
29 to a person under investigation or during any court or administrative
30 proceeding against a person under investigation as provided in this
31 subsection (4). The disclosure must be in connection with the
32 department's official duties relating to an audit, collection activity,
33 or a civil or criminal investigation. The disclosure may occur only
34 when the person under investigation and the person in possession of
35 data, materials, or documents are parties to the return or tax
36 information to be disclosed. The department may disclose return or tax
37 information such as invoices, contracts, bills, statements, resale or
38 exemption certificates, or checks. However, the department may not
39 disclose general ledgers, sales or cash receipt journals, check

1 registers, accounts receivable/payable ledgers, general journals,
2 financial statements, expert's workpapers, income tax returns, state
3 tax returns, tax return workpapers, or other similar data, materials,
4 or documents.

5 (b) Before disclosure of any tax return or tax information under
6 this subsection (4), the department shall, through written
7 correspondence, inform the person in possession of the data, materials,
8 or documents to be disclosed. The correspondence shall clearly
9 identify the data, materials, or documents to be disclosed. The
10 department may not disclose any tax return or tax information under
11 this subsection (4) until the time period allowed in (c) of this
12 subsection has expired or until the court has ruled on any challenge
13 brought under (c) of this subsection.

14 (c) The person in possession of the data, materials, or documents
15 to be disclosed by the department has twenty days from the receipt of
16 the written request required under (b) of this subsection to petition
17 the superior court of the county in which the petitioner resides for
18 injunctive relief. The court shall limit or deny the request of the
19 department if the court determines that:

20 (i) The data, materials, or documents sought for disclosure are
21 cumulative or duplicative, or are obtainable from some other source
22 that is more convenient, less burdensome, or less expensive;

23 (ii) The production of the data, materials, or documents sought
24 would be unduly burdensome or expensive, taking into account the needs
25 of the department, the amount in controversy, limitations on the
26 petitioner's resources, and the importance of the issues at stake; or

27 (iii) The data, materials, or documents sought for disclosure
28 contain trade secret information that, if disclosed, could harm the
29 petitioner.

30 (d) The department shall reimburse reasonable expenses for the
31 production of data, materials, or documents incurred by the person in
32 possession of the data, materials, or documents to be disclosed.

33 (e) Requesting information under (b) of this subsection that may
34 indicate that a taxpayer is under investigation does not constitute a
35 disclosure of tax return or tax information under this section.

36 (5) Any person acquiring knowledge of any return or tax information
37 in the course of his or her employment with the department of revenue
38 and any person acquiring knowledge of any return or tax information as
39 provided under subsection (3)(f), (g), (h), (i), or (j) of this

1 section, who discloses any such return or tax information to another
2 person not entitled to knowledge of such return or tax information
3 under the provisions of this section, is guilty of a misdemeanor. If
4 the person guilty of such violation is an officer or employee of the
5 state, such person shall forfeit such office or employment and shall be
6 incapable of holding any public office or employment in this state for
7 a period of two years thereafter.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.32 RCW
9 to read as follows:

10 The department of revenue may furnish lists of taxpayer names,
11 entity types, business addresses, mailing addresses, revenue tax
12 registration numbers, standard industrial classification code of a
13 taxpayer, and the dates of opening and closing of a business to
14 companies that provide on-line computer data base services. The on-
15 line computer companies shall provide the data bases consisting
16 primarily of public records only to other federal, state, or local
17 government agencies solely for law enforcement or government purposes.
18 Before providing a list to a company under this section, the department
19 shall obtain a written agreement that any list so provided shall be
20 used only for the purposes specified in this section.

21 NEW SECTION. **Sec. 5.** A new section is added to chapter 42.17 RCW
22 to read as follows:

23 To prevent the unauthorized secondary use of public records
24 obtained under RCW 46.12.370(6) and sections 2 and 4 of this act by
25 companies that provide on-line computer data services:

26 (1) All conditions and limitations required of such companies and
27 their agents shall be at a minimum consistent with restrictions imposed
28 on other authorized users of these public records;

29 (2) These companies and their agents shall assume full
30 responsibility and liability for violations of prohibitions on
31 secondary uses of these public records; and

32 (3) If such a company or its agents knowingly makes an unauthorized
33 use of these public records or sells these public records, the company
34 shall be liable for damages to each and every person on the list in the
35 amount of five hundred dollars or actual damages, whichever is greater,
36 and the company shall not be eligible to obtain these lists for a
37 period of five years.

1 **Sec. 6.** RCW 43.105.310 and 1996 c 171 s 15 are each amended to
2 read as follows:

3 State agencies and local governments that collect and enter
4 information concerning individuals into electronic records and
5 information systems that will be widely accessible by the public under
6 RCW 42.17.020 shall ensure the accuracy of this information to the
7 extent possible. To the extent possible, information must be collected
8 directly from, and with the consent of, the individual who is the
9 subject of the data. Agencies shall establish procedures for
10 correcting inaccurate information, including establishing mechanisms
11 for individuals to review information about themselves and recommend
12 changes in information they believe to be inaccurate. The inclusion of
13 personal information in electronic public records that is widely
14 available to the public should include information on the date when the
15 data base was created or most recently updated. If personally
16 identifiable information is included in electronic public records that
17 are made widely available to the public, agencies must follow retention
18 and archival schedules in accordance with chapter 40.14 RCW, retaining
19 personally identifiable information only as long as needed to carry out
20 the purpose for which it was collected. State agencies and local
21 governments that collect information that is subject to disclosure
22 shall, to the extent practicable, post public notice that the
23 information gathered may be disclosable as a public record. The
24 agency-specific notice will generally reflect the common use of the
25 records. Upon request, state and local governments shall provide a
26 written statement regarding the circumstances under which public
27 records may be disclosed and its common business uses to the public.
28 However, failure to provide agency specific notice or failure to
29 provide a written statement upon request shall not limit access to
30 public records.

31 **Sec. 7.** RCW 43.105.170 and 1996 c 171 s 10 and 1996 c 137 s 13 are
32 each reenacted and amended to read as follows:

33 (1) Each agency shall develop an agency strategic information
34 technology plan which establishes agency goals and objectives regarding
35 the development and use of information technology. The superintendent
36 of public instruction shall develop its plan in conjunction with
37 educational service districts and state-wide or regional providers of

1 K-12 education information technology services. Plans shall include,
2 but not be limited to, the following:

3 (a) A statement of the agency's mission, goals, and objectives for
4 information technology, including goals and objectives for achieving
5 electronic access to agency records, information, and services;

6 (b) An explanation of how the agency's mission, goals, and
7 objectives for information technology support and conform to the state
8 strategic information technology plan developed under RCW 43.105.160;

9 (c) An implementation strategy to provide electronic access to
10 public records and information. This implementation strategy must be
11 assembled to include:

12 (i) Compliance with Title 40 RCW;

13 (ii) Adequate public notice and opportunity for comment;

14 (iii) Consideration of a variety of electronic technologies,
15 including those that help transcend geographic locations, standard
16 business hours, economic conditions of users, and disabilities;

17 (iv) Methods to educate both state employees and the public in the
18 effective use of access technologies;

19 (d) Projects and resources required to meet the objectives of the
20 plan; and

21 (e) Where feasible, estimated schedules and funding required to
22 implement identified projects.

23 (2) Plans developed under subsection (1) of this section shall be
24 submitted to the department for review and forwarded along with the
25 department's recommendations to the board for review and approval. The
26 board may reject, require modification to, or approve plans as deemed
27 appropriate by the board. Plans submitted under this subsection shall
28 be updated and submitted for review and approval as necessary.

29 (3) Each agency shall prepare and submit to the department a
30 biennial performance report. The superintendent of public instruction
31 shall develop its plan in conjunction with educational service
32 districts and state-wide or regional providers of K-12 education
33 information technology services. The report shall include:

34 (a) An evaluation of the agency's performance relating to
35 information technology;

36 (b) An assessment of progress made toward implementing the agency
37 strategic information technology plan;

1 (c) Progress toward electronic access to public information and
2 enabling citizens to have two-way interaction for obtaining information
3 and services from agencies; and

4 (d) An inventory of agency information services, equipment, and
5 proprietary software.

6 (4) The department, with the approval of the board, shall establish
7 standards, elements, form, and format for plans and reports developed
8 under this section.

9 (5) Agency activities to increase electronic access to public
10 records and information, as required by this section, must be
11 implemented within available resources and existing agency planning
12 processes.

13 (6) The board may exempt any agency from any or all of the
14 requirements of this section.

15 (7) Each state agency and local government shall maintain a listing
16 available for public inspection and copying of all agreements with
17 other governments and business entities for the release and disclosure
18 of public record information.

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